

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA) Criminal No. 98-13 Erie
vs.)
MICHAEL POINDEXTER)

Transcript of: Sentencing hearing.

Date: August 19, 1999.

Before: Maurice B. Cohill, Jr., U.S. District Judge

Reporter: Colvin Vogel, Official Reporter
1031 U.S. Courthouse
Pittsburgh, PA 15219
(412) 261-4095

APPEARANCES

JOHN TRUCILLA, Assistant U.S. Attorney, Suite 302,
100 State Street, Erie, PA 16507, appearing in behalf of
the United States of America.

WILLIAM F. SCARPITTI, JR., Suite 102, 150 W. 6th
Street, Erie, PA 16501, appearing in behalf of the
Defendant, Michael Poindexter.

PROCEEDINGS

DEFENDANT'S EXHIBIT A

1 (August 19, 1999, 10:00 a.m.)

2 (In chambers.)

3 MR. TRUCILLA: The government is here in the
4 matter of the U. S. of America versus Michael Poindexter in
5 the presence of Trooper Taylor who's a state trooper who
6 works primarily narcotics, works with the tactical narcotics
7 investigation units, and he primarily supervised
8 Mr. Poindexter.

9 And the reason we are here, Your Honor, is because
10 I wanted to further explore in specific detail the
11 cooperation provided by Mr. Poindexter so we can make an
12 assessment as to his cooperation. And I think, Your
13 Honor -- and I think Mr. Scarpitti would agree -- that we
14 have a pretty serious guideline range here. And I think out
15 of an abundance of caution we are going to show deference to
16 Mr. Poindexter and go forward with this motion.

17 So to that end let me have the trooper sworn so we
18 can ask him some questions.

19 (Trooper John Taylor sworn.)

20 BY MR. TRUCILLA:

21 Q. State your full name.

22 A. John Taylor, Pennsylvania State Police.

23 Q. How long have you worked for the Pennsylvania State
24 Police?

25 A. Approximately six and half years.

1 Q. Have you, Trooper, dealt in any particular area of
2 investigation during these six and a half years?

3 A. For the past three and a half years I have been an
4 undercover trooper.

5 Q. Have you involved yourself with undercover operations
6 involving the illegal sale of cocaine?

7 A. Yes, sir, I have.

8 Q. And in the course of that experience have you come in
9 contact with an individual by the name of Michael
10 Poindexter?

11 A. Yes, sir, I have.

12 Q. Was that down in the Franklin, Pennsylvania, area?

13 A. Yes, sir.

14 Q. Is that an area you primarily work right now?

15 A. Yes, sir, Venango County.

16 Q. For lack of better vernacular, you got to know the
17 players, so to speak, that were involved in the trade of
18 selling cocaine in that area?

19 A. Yes.

20 Q. Once this investigation was handled and Mr. Poindexter
21 came in and pled guilty, did you have any contact with him
22 regarding information, or at least the understanding that he
23 wanted to cooperate with law enforcement officials?

24 A. Yes, sir.

25 Q. Why don't you take it from there and explore with the

1 court the contacts you made with him, the information he
2 relayed to you, and what if anything he did to further this
3 agreement?

4 A. Okay. Mr. Poindexter during, I believe, approximately
5 the last 14 months -- initially there was no contact with
6 Mr. Poindexter at all. In connection --

7 THE COURT: You say for the last 14 months you
8 have not had contact?

9 THE WITNESS: At the initial time, after
10 Mr. Poindexter was arrested, there was no contact with
11 Mr. Poindexter other than at one point in time we met with
12 Mr. Scarpitti in his office and he gave information on
13 individuals that I already knew about.

14 THE COURT: Okay.

15 BY MR. TRUCILLA:

16 Q. Let me ask you about that. Let's go to that step one,
17 that meeting with Mr. Scarpitti. Did you ask Mr. Poindexter
18 about various individuals that you had known or was it an
19 open-ended question basically saying tell me what you know,
20 or how did that come about?

21 A. It would have went both ways there. And Mr. Poindexter
22 was asked to help us with undercover buys, to make
23 controlled buys for us at that time and throughout that
24 period of time and up until today. And Mr. Poindexter had
25 contacted me; he went to a rehab center for a while. And

1 Mr. Scarpitti and myself also had phone conversations
2 concerning whether or not Mr. Poindexter would cooperate.
3 He had my pager number as well as Special Agent Gorham's
4 contact number. I did talk to Mr. Poindexter a handful of
5 times. And the information he gave me concerned actually
6 one drug dealer in Venango County by the name Dubre Hoover.
7 What Mr. Poindexter stated to me was that he couldn't do
8 anything with Mr. Hoover. The information I gave to him was
9 if there is a time when you want to do something, actually
10 help us out in our investigation, get in touch with me.
11 Mr. Poindexter never called me, never wanted to do anything.
12 And my perception -- he said that everybody thought that he
13 was, quote, a snitch, and nobody would get close to him.
14 And the only information that Mr. Poindexter gave to us that
15 was relevant was that he was actually subpoenaed to a trial
16 and he testified at the trial.

17 THE COURT: Was that here?

18 MR. TRUCILLA: No, this was down in Crawford
19 County.

20 THE WITNESS: Excuse me. It was Venango County
21 Court of Common Pleas.

22 MR. TRUCILLA: I'm sorry. Venango County.

23 BY MR. TRUCILLA:

24 Q. Go ahead, Trooper.

25 A. We chose to subpoena Mr. Poindexter because the opinion

1 of us was he wouldn't show up if we asked him to. He
2 testified in that proceeding against an individual named
3 Kenneth Lamont Shariff (sp).

4 Q. Was his testimony helpful?

5 A. It was a conviction, yes.

6 Q. Subsequent to that there, were any other debriefings or
7 any other information provided?

8 A. I spoke to Mr. Poindexter that day during the trial and
9 again reiterated to him to contact me when you have
10 something or you want to do something. And it wasn't much
11 later than that that Mr. Poindexter, from what I understand,
12 had a hot urinalysis, was told to come to Erie, and then
13 he took off. He has actually been a fugitive.

14 THE COURT: We didn't expect to have this today.

15 BY MR. TRUCILLA:

16 Q. Let me ask you, in your years of experience working
17 undercover and doing cocaine transactions and other
18 controlled substances, have you dealt with individuals who
19 have agreed to cooperate with the government?

20 A. Yes, sir.

21 Q. Have you debriefed them?

22 A. Yes.

23 Q. And by comparison and contrast, can you make an
24 assessment as to the attitude expressed by Mr. Poindexter?
25 Was it enthusiastic? What was your assessment of his

1 cooperation?

2 A. My assessment of Mr. Poindexter's cooperation, it is
3 hard to assess it to a good degree. I don't understand what
4 went through his mind, realizing the seriousness of his
5 fate. And his assessment to me on a scale of one to ten it
6 would be a one.

7 THE COURT: He has had a very checkered criminal
8 career, really. I counted a lot of either convictions or
9 run-ins with the law in his presentence report.

10 MR. TRUCILLA: Before I turn him over --
11 Mr. Scarpitti, do you want to ask him questions?

12 MR. SCARPITTI: Yes, I think so.

13 - - -

14 BY MR. SCARPITTI:

15 Q. Trooper, Mr. Poindexter, when you first arrested him,
16 confessed right away, did he not?

17 A. Oh, yes.

18 Q. In fact, he gave you a background briefing basically in
19 that confession, did he not, as a drug dealer?

20 A. Yes.

21 Q. And when we met in my office in December, he again gave
22 you a background briefing as to drug dealing in the area in
23 which he lives, the Venango County, Oil City-Franklin area,
24 correct?

25 A. Correct.

1 Q. One of his fears he had expressed to you was a fear that
2 because he has a young child that if he were wired or
3 something like that that his family would be hurt; is that
4 correct?

5 A. That was his assessment, yes.

6 Q. Correct. Right. And after that he did testify in
7 Venango County in Common Pleas and was helpful in getting a
8 conviction in a drug case?

9 A. I would say so, yes.

10 Q. There have been some other occasions where he had some
11 conversations with you where he would say something like, "I
12 know the guy is going to go to Detroit to pick up drugs
13 today or tomorrow," didn't he, over the period of time?

14 A. No, sir, I don't recall that.

15 Q. June of -- I believe it might have taken place after
16 January of '99.

17 A. I don't recall. What I do recall about Detroit is that
18 Mr. Poindexter did advise us that he made a trip to Detroit
19 himself with another individual leaving the district, which
20 he wasn't supposed to do. He never contacted us ahead of
21 time or anything. And when I asked him if he thought that
22 they went to pick up drugs, his assessment was they might
23 have. He was in the car with --

24 Q. But he did make you aware of that and --

25 A. After the fact.

1 Q. -- of the individuals who were going to Detroit?

2 A. Same individuals that he gave us the background on
3 before. He didn't give a specific time frame that I can
4 recall though.

5 Q. One of his problems was, didn't he say to you, that
6 people down there knew he had been arrested and thought he
7 was snitching, and a lot of his ability to be of any major
8 help to you had dried up?

9 A. That was his assessment. I take it as somebody who was
10 still using crack cocaine, that he was still using it, but
11 telling me he can't do anything. That it is very
12 contradictory.

13 Q. When he in your investigation -- would it be fair to say
14 that he is not a big drug player in terms of being a
15 big-time seller in the Venango County area; he is more of a
16 person who was a street seller to get drugs for himself?

17 A. That would be my assessment.

18 Q. Small time?

19 A. He might be more so for himself, for his habit, himself.
20 But in the same time he had such big connections that it is
21 hard to say exactly where he would fall into the spectrum.

22 Q. In fact in the presentence -- did you read the
23 presentence?

24 A. No, I didn't.

25 Q. Subsequent to your initial meeting with the dealer who

1 sold you drugs that Mr. Poindexter introduced you to, there
2 is a series of conduct alleged between you and the dealer.
3 Basically Mr. Poindexter really played no role in that whole
4 transaction except to introduce you to the individual; isn't
5 that correct? He wasn't present at any of the subsequent
6 incidents that you've related?

7 A. No, he wasn't. There was a reason for that.

8 Q. Okay.

9 MR. SCARPITTI: Judge, I have nothing further.

10 THE COURT: At the very -- there is an addendum to
11 the presentence report that Ms. Henderson prepared here.
12 And it indicates that on October 29, 1998, he had appeared
13 in Venango County Court of Common Pleas, and he was
14 permitted to withdraw a plea of guilty which he previously
15 entered. Trial has been set in this matter for December 7,
16 1998.

17 MR. SCARPITTI: He subsequently pled to that.

18 THE COURT: What were the charges here?

19 MR. SCARPITTI: I believe simple assault.

20 MR. TRUCILLA: Yes.

21 THE COURT: Okay. Well, I can't think of anything
22 else I need to ask.

23 Are you going to say anything out there or have
24 the trooper testify?

25 MR. TRUCILLA: I don't want to get into any more

1 specifics out there. I think we explored it here. Again,
2 this may be a better setting here. I think you know that in
3 good faith the government brings this motion to the court.
4 It is not the best 5K, but I think it is something that
5 merits probably consideration by you. And I think you know,
6 again, we are doing it out of deference to him.

7 MR. SCARPITTI: My thrust would be that these
8 guidelines, in Congress' wisdom, just are so high that this
9 is not an individual who deserves that kind of
10 incarceration.

11 THE COURT: But I'm concerned about his past
12 record. He got this history of drinking, substance abuses,
13 history of substance abuse of one kind or another, and a
14 couple of assaults, and, you know, people get physical, and
15 I get worried.

16 MR. SCARPITTI: If I could, this may be a good
17 time -- if you look at his prior record, though, judge, you
18 go back to age 18, and under state law that is the only
19 felony that we have, and it is a robbery, and that is a
20 purse snatching. There are simple assaults in there, and
21 almost everything that this kid did -- well, he is a man
22 now. I shouldn't call him a kid -- everything that
23 Mr. Poindexter did, almost everything was handled at the
24 district justice level. And it would seem to me that the
25 seriousness of his incidents, except for the purse

1 snatching, and thank God the individual wasn't badly hurt in
2 the purse snatching, up until we get to this offense on a
3 scale, judge, are not all that serious, each and every one
4 of them alone. I would agree with the court that he has got
5 a checkered history from 18 on and being in front of the
6 system. I would think that probably Mr. Trucilla and
7 Officer Taylor would agree with me that it probably stems
8 from his abuse both of alcohol and of drugs.

9 THE COURT: Disorderly conduct type stuff.
10 Sometimes you never know. Here is drunk and disorderly, and
11 public drunkenness, age 26, in '94, after receiving -- the
12 police responded after receiving reports that Michael
13 Poindexter was outside in the street slapping Cindy Tarr in
14 the head. Cindy I think was his girlfriend or something.
15 That kind of thing can lead to serious injuries too, or
16 worse.

17 MR. TRUCILLA: You could look at it and the
18 question that just hits you in the face is when is he going
19 to grow up, when is he going to decide his kids and family
20 are more important. Mr. Scarpitti knows that a lot of the
21 problems he had on supervision was because of his addiction
22 to crack cocaine. He had a hot cocaine test. When you are
23 in that environment it can only lead to trouble, and that is
24 what he mixed himself up in.

25 THE COURT: I am going to consider the 5K too and

1 see where we go.

2 Are you going to have any testimony?

3 MR. SCARPITTI: No, Your Honor.

4 THE COURT: Thank you.

5 (Conclusion of conference in chambers.)

6 (In open court.)

7 THE COURT: This is the time set for the
8 sentencing of Michael Anthony Poindexter. And we note that
9 Mr. Poindexter and his attorney Mr. Scarpitti have signed
10 the notice indicating they have received a copy of and
11 reviewed the presentence report. We will make that part of
12 the record. If an appeal should be taken, of course,
13 counsel on appeal will be permitted access to the report.

14 There has been no information which was withheld
15 from the defendant which was given to the court.

16 There have been no objections filed to the
17 presentence report.

18 So we find initially that the appropriate offense
19 level is 34, and the criminal history category is Roman
20 numeral six. Thus the applicable guideline range is 262 to
21 327 months of imprisonment. Mr. Poindexter would be
22 ineligible for probation. Supervised release of five years.
23 A fine in the range of 17,500 to 4,000,000 dollars. And a
24 special assessment of 100 dollars.

25 The government has however presented a 5K1.1

1 motion based on certain cooperation which the government
2 received from Mr. Poindexter. And we are taking that into
3 consideration.

4 Well, Mr. Scarpitti, at this time is there
5 anything you would wish to say or introduce any additional
6 testimony on behalf of your client?

7 MR. SCARPITTI: As you know we had an
8 on-the-record discussion in chambers. I won't repeat what I
9 said there. The only thing I would point out to the court
10 is Mr. Poindexter has been a primary custodian for his young
11 son and has been so for a number of years. He also lives
12 with his dad and he helps his dad. His dad has arthritis
13 and diabetes, and has had hip replacement surgery.

14 It is a dichotomy, judge, no question. He is a
15 very loving son and father who tried to take care of his
16 family. There is also no question that if you look at his
17 past history, as I pointed out in chambers, under
18 Pennsylvania law only one would have been a felony. That
19 was the purse snatching, age 18.

20 You can look at that history and you can see that
21 there was a problem of drugs and alcohol. He was dependent.
22 And that has been the source of all the problems. He is an
23 individual who admitted his guilt in all those past offenses
24 and never once took the Commonwealth to trial; that he has
25 always admitted his guilt, as in this proceeding. He

1 cooperated with the authorities in terms of his admission
2 and his confession, background information, from day one.

3 And he now stands before you ready to be
4 sentenced. We would ask the court to depart from the
5 guidelines, depart from the guidelines dramatically. We
6 feel that this is an individual who in his illegal conduct
7 of selling, that he sells to get drugs, not to make a big
8 profit. He is not a big money man. He is not importing
9 them. He sells so that he can use. While it is
10 reprehensible, we know the court can take cognizance in that
11 basically it is a problem of his own alcohol and drug abuse.
12 We would ask the court to fashion a sentence which will
13 allow him to have the time to be rehabilitated to protect
14 society, but we don't feel, judge, with all respect, that
15 the guidelines -- the guidelines as they are given by the
16 sentencing commission certainly well exceed the point where
17 society has protection from Mr. Poindexter and well exceed
18 his role in the drug scheme in this case.

19 THE COURT: Well thank you, Mr. Scarpitti.

20 Does Mr. Poindexter have anything he wishes to
21 say?

22 THE DEFENDANT: I would just like to say I'm sorry
23 for the things that I have done. I'm sorry for losing
24 Trooper Taylor's trust and wasting their time. I feel bad
25 about that. And I would like to say I'm sorry to my father

1 and mother and my children. I would like to say I'm sorry,
2 and really that is all.

3 THE COURT: Thank you.

4 Mr. Trucilla, does the government have anything?

5 MR. TRUCILLA: I want to say something real brief,
6 Your Honor.

7 What is somewhat troubling to me and Mr. Taylor,
8 you know, in that vein, and the drugs, that throughout the
9 course of this, and I think Mr. Scarpitti will agree, we
10 really went to every possible extent of deference to allow
11 Mr. Poindexter to take advantage of opportunities that were
12 afforded to him, various opportunities that were explored in
13 chambers. And he is now 31 years old, and he has got to
14 wake up and understand that for 13 years he has been
15 involved in the adult criminal system in some form or
16 another. Although as an isolated incident each one may look
17 petty or trivial, they are not. He involves himself with
18 the wrong people and the wrong choices. However, we have
19 made our motion, and we stand by it. And I think the
20 guidelines will therefore accommodate for this activity.

21 THE COURT: Thank you.

22 Well, the way I view this thing is because of the
23 number of offenses you've had, Mr. Poindexter, you are
24 designated under the guidelines here what they call a career
25 criminal. That brings the guidelines up considerably. As I

1 mentioned before, the guidelines, without any 5K motion,
2 they call for 262 to 327 months of imprisonment. That is
3 because of the career criminal designation.

4 Now I'm concerned about the number of times it
5 looks like disorderly conduct, and it could have been a lot
6 more serious, and apparently you have done many things when
7 you were under the influence of alcohol and perhaps drugs.
8 And, well, it is fortunate that no one was seriously injured
9 in any of these incidents. That possibility is always there
10 when you get grown-ups pushing each other around.

11 But I am going to consider the 5K motion filed by
12 the government. And what I'm going to do, which I think is
13 fair to all concerned, is to eliminate the criminal career
14 designation. Without that the guideline calls for a minimum
15 of 140 months. And that is the sentence that we are going
16 to impose here.

17 Is there any reason that sentence should not be
18 imposed, Mr. Scarpitti?

19 MR. SCARPITTI: Not that I know of, Your Honor.

20 THE COURT: Mr. Poindexter?

21 THE DEFENDANT: No.

22 THE COURT: Mr. Trucilla?

23 MR. TRUCILLA: My only question was -- I have
24 the presentence report, and I think technically he could not
25 max out -- he did not max out as a career offender. He

1 wasn't a level six; he was a level five.

2 I want to talk to the probation officer here.

3 (Conference between Mr. Trucilla and Ms. Henderson.)

4 MR. TRUCILLA: Your Honor, in response to your
5 question, there is not a reason why sentence should not be
6 imposed now.

7 THE COURT: There was a third addendum to the
8 presentence report which called for -- roman numeral six.
9 That was based on the later trial he had down in Venango
10 County, or where he had the trial.

11 Well, I think that is really immaterial as far as
12 the legality of the sentence is concerned. I think in view
13 of all the circumstances here 140 months is a fair sentence,
14 and that is what we are going to do here.

15 Pursuant to the Sentencing Reform Act of 1984, it
16 is the judgment of the court that the defendant Michael
17 Anthony Poindexter is hereby committed to the custody of the
18 Bureau of Prisons to be imprisoned for a term of 140 months.

19 Upon release from imprisonment the defendant shall
20 be placed on supervised release for a term of five years.

21 Within 72 hours of release from the custody of the
22 Bureau of Prisons, the defendant shall report in person to
23 the probation office in the district to which the defendant
24 is released. While on supervised release the defendant
25 shall not commit any federal, state or local crimes, shall

1 comply with the standard conditions of supervision that have
2 been recommended by the sentencing commission and adopted by
3 this court, and shall also comply with the following
4 additional conditions:

5 The defendant shall be prohibited from possessing
6 a firearm or destructive device.

7 The defendant shall not unlawfully possess a
8 controlled substance.

9 The defendant shall participate in a program of
10 testing and, if necessary, treatment for substance abuse as
11 directed by the probation officer until such time as the
12 defendant is released from the program by the probation
13 officer.

14 Further, the defendant shall be required to
15 contribute to the cost of services for any such treatment
16 not to exceed an amount determined reasonable by the
17 probation officer's sliding scale for substance abuse
18 treatment services.

19 The defendant shall submit one drug urinalysis
20 within 15 days after being placed on supervision and at
21 least four tests a year thereafter.

22 The court will waive a fine in this case due to
23 the defendant's inability to pay.

24 It is further ordered that the defendant shall pay
25 to the United States a special assessment of 100 dollars

1 which shall be paid to the United States District Court
2 Clerk forthwith.

3 Finally, it is further ordered that the defendant
4 shall be taken into custody immediately.

5 The guideline range does exceed 24 months.

6 And the reasons for imposing the selected sentence
7 are that we believe a sentence of 140 months based on a
8 reduction because of the 5K motion by the government will
9 adequately address the sentencing objectives of individual
10 and general deterrence and punishment and protection of the
11 community.

12 Mr. Poindexter, you have the right to appeal. You
13 are entitled to a lawyer at every stage of this proceeding.
14 If you cannot afford an attorney, one will be provided for
15 you without charge.

16 I think the government has a motion with respect
17 to Count 2?

18 MR. TRUCILLA: We will move to dismiss Count 2,
19 Your Honor.

20 THE COURT: We will grant that motion.
21 Court is adjourned.

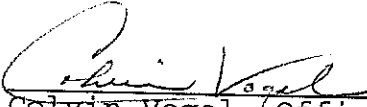
22 MR. SCARPITTI: Thank you, Your Honor.

23 (Whereupon at 10:45 a.m. the proceedings were
24 concluded.)

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4 I CERTIFY THE FOREGOING IS A CORRECT TRANSCRIPT
5 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
6 MATTER.

7
8 
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